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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45055
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2016-8848
v.)	
)	
KATRINA ROBIN BINGAMAN,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
<hr/>)	

STATEMENT OF THE CASE

Nature of the Case

The district court sentenced Katrina Robin Bingaman to fifteen years, with three years fixed for attempted robbery. The district court also retained jurisdiction (“a rider”). After the rider, the district court suspended Ms. Bingaman’s sentence and placed her on probation. Ms. Bingaman appeals, arguing the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

On July 8, 2016, Ms. Bingaman saw a woman cash a check for \$2,196 at Wal-Mart. (Presentence Investigation Report (“PSI”),¹ p.3.) Ms. Bingaman then followed the woman to a liquor store and tried to take the money out of her pocket. (PSI, p.3.) The women “physically struggled,” and both had minor injuries. (PSI, p.3.) Based on this conduct, the State alleged Ms. Bingaman committed the crime of attempted robbery, in violation of I.C. §§ 18-306, 6501. (R., pp.8–9.) Ms. Bingaman waived a preliminary hearing, and the magistrate bound her over to district court. (R., pp.32, 33–34.) The State charged her with attempted robbery. (R., pp.35–36.) Pursuant to a plea agreement, Ms. Bingaman pled guilty as charged. (R., pp.44, 46.) The State agreed to recommend a sentence of fifteen years, with three years fixed. (R., pp.44, 46.) Ms. Bingaman was free to argue for a lesser sentence. (R., pp.44, 46.)

At sentencing, the State recommended a sentence of ten years, with two years fixed, which was less than the original plea agreement. (Tr., p.8, Ls.17–20.) Ms. Bingaman requested the district court place her on probation, with an underlying sentence of six years, with one year fixed. (Tr., p.15, Ls.17–21.) The district court imposed the sentence from original plea agreement: fifteen years, with three years fixed. (Tr., p.20, Ls.8–10.) The district court also retained jurisdiction. (Tr., p.20, L.11; *see also* R., pp.58–61 (judgment of conviction).) After the rider, the district court suspended Ms. Bingaman’s sentence and placed her on probation for seven years. (Tr., p.28, Ls.16–19; R., pp.75–77.) Ms. Bingaman timely appealed from the district court’s order suspending her sentence. (R., pp.80–81.)

¹ Citations to the PSI refer to the 136-page electronic document that contained the confidential exhibits.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with three years fixed, upon Ms. Bingaman, following her guilty plea to attempted robbery?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Three Years Fixed, Upon Ms. Bingaman, Following Her Guilty Plea To Attempted Robbery

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Ms. Bingaman’s sentence does not exceed the statutory maximum. *See* I.C. § 18-306(a) (maximum of fifteen years). Accordingly, to show that the sentence imposed was unreasonable, Ms. Bingaman “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Here, Ms. Bingaman asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, she contends the district court should have sentenced her to a lesser term of imprisonment in light of the mitigating factors, including her support network, relatively minor recent criminal history, acceptance of responsibility, and remorse for the crime.

Ms. Bingaman's support system stands in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 594–95 (1982) (family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance). Ms. Bingaman's parents, who were present at the sentencing hearing, were supportive of her. (Tr., p.15, Ls.2–6.) Her husband was supportive as well. He told the presentence investigator that Ms. Bingaman was “[g]enuine, very honest, very kind hearted, very supportive of me. I consider her half my support system. I love and care for her very much. She is an awesome mom, very loving and caring and honest and she will have my support when she gets out.” (PSI, p.8.) In addition, Ms. Bingaman attended church, and her faith was “very important” to her. (PSI, pp.7, 13.) Ms. Bingaman asserts this support system supports a lesser sentence.

The lack of a serious, recent criminal record also supports a lesser sentence for Ms. Bingaman. “The absence of a criminal record is a mitigating factor that courts consider.” *State v. Miller*, 151 Idaho 828, 836 (2011). “It has long been recognized that ‘[t]he first offender should be accorded more lenient treatment than the habitual criminal.’” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). Here, as shown in the PSI, Ms. Bingaman had only one prior felony conviction, which occurred over sixteen years ago in 2000. (PSI, pp.4, 6.) Since then, she has had six misdemeanor

convictions, all occurring in the last four years. (PSI, pp.4–6.) She explained to the district court that the instant felony offense was “an eye opener.” (Tr., p.18, Ls.2–3.) Ms. Bingaman submits the district court failed to give adequate consideration to her criminal history and imposed an excessive sentence under the circumstances.

Finally, Ms. Bingaman has expressed great remorse for the harm to the victim and accepted responsibility for her actions. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *Shideler*, 103 Idaho at 595. During the presentence interview, Ms. Bingaman described her feelings about the crime as: “Absolutely horrible it has had a tremendous domino effect in every aspect from the victim to my entire family.” (PSI, p.4.) She also wrote to the district court that she was “truly sincerely sorry” to the victim, her family, the State of Idaho, and the judge. (PSI, p.13.) She accepted “full responsibility” for the crime and knew “what I did was wrong—so very wrong.” (PSI, p.13.) Ms. Bingaman made similar remarks at sentencing. She apologized to the victim again. (Tr., p.16, Ls.11–12.) For example, she stated, “Just, I’m sorry. I hope that my victim . . . I’m not exactly sure how this has affected her to this day. I hope that she’s okay mentally and emotionally, and that one day she would be able to forgive me for this. It was horrible. It was a really messed up thing to do.” (Tr., p.17, Ls.16–22.) Ms. Bingaman asserts the district court failed to give sufficient weight to these statements of acceptance, remorse, and regret at sentencing.

CONCLUSION

Ms. Bingaman respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she respectfully requests that this Court vacate her judgment of conviction and remand this case for a new sentencing hearing.

DATED this 16th day of August, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

KATRINA ROBIN BINGAMAN
26 N PARK DRIVE
NAMPA ID 83651

MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas